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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,672	11/25/2003	Lisa V. Lloyd	IVP-109	5640
41245	7590	01/11/2007	EXAMINER	
MARK LEVY & ASSOCIATES, PLLC PRESS BUILDING, SUITE 902 19 CHENANGO STREET BINGHAMTON, NY 13901			DOAN, ROBYN KIEU	
		ART UNIT		PAPER NUMBER
				3732
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/11/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/721,672	LLOYD, LISA V.	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 October 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 23 and 25-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 23 and 25-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's Amendment filed 10/25/2006 has been entered and carefully considered. Claim 23 has been amended. Claim 24 has been canceled. Arguments regarding the 35 U.S.C 103 (a) rejection to claims 23, 25-29 have not been found to be persuasive, therefore, claims 23, 25-29 are rejected under the same ground rejection as set forth in the office action mailed 7/21/2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo et al (U.S. Pat. # 5,113,554).

With regard to claims 23-28, Gallo et al discloses a one-piece flexible clip inherently can be used for styling and holding sections of hair (figs. 1-2, Applicant is noted that clip 10 being made of polyester, col. 3, lines 44, 45, therefore, it is inherently flexible) comprising an upper portion (28) that is capable to be flex between a stable convex open position and a stable concave closed position, a lower portion (16) with a plurality of planar teeth (18, 20) extending parallel to the length of the upper portion, the

lower portion being integrally connected to the upper portion (figs. 1-2), the lower portion being at least as long as the upper portion (see fig. 1) and the lower portion extending laterally beyond the periphery of the upper portion (figs. 1-2), the plurality of planer teeth in the lower portion inherently forming a comb configuration and a plurality of protuberances (30, fig. 1) formed on an interior side of the upper portion for enhancing the gripping properties. Gallo et al further shows the lower portion hingedly connected to the upper portion (at 32). Gallo et al fails to show the material of the upper and lower portions being made of spring steel material, however, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the upper and lower portions with the spring steel material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Applicant is noted that the clip of Gallo et al is capable of functioning as claimed.

Response to Arguments

Applicant has argued that Gallo et al fails to show the upper portion may be flexed between a stable convex open position and a stable concave closed position, however, it is noted that the claims is not positively claimed the upper portion flexed between a stable convex open position and a stable concave closed position, and since the configuration of the upper portion (40) of Gallo et al being bent inwardly, therefore,

the upper portion of Gallo et al is capable of flexing between a stable convex open position and a stable concave closed position.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Examiner
Art Unit 3732